



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

October 23, 2012

VIA E-MAIL

Mr. Michael Morisy
MuckRock News
DEPT MR 1907
PO Box 55819
Boston, MA 02205-5819

RE: ***Freedom of Information Act Request No. F-12-00239***

Dear Mr. Morisy:

The United States Patent and Trademark Office (USPTO) FOIA Office is in receipt of your e-mail received September 24, 2012, in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, copies of:

Petitions filed between January 1, 2002 and the date that this request was processed for the rescission or removal of a patent secrecy requests, as well as the final responses to the petitions.

The USPTO has identified documents that are responsive to your request. However, some of the responsive records are not releasable as they pertain to unpublished patent information. For the records that are releasable, we have enclosed a one page document listing the file numbers and filing dates for petitions to rescind secrecy orders filed during the time period you requested. Copies of these petitions as well as final responses to the petitions are retrievable in our Patent Application Information Retrieval (PAIR) system. Please visit <http://portal.uspto.gov/external/portal/pair> to retrieve the petitions. If, for any reason, you cannot access this information in PAIR, you can order the files by calling the Patent Electronic Business Center at 1-866-217-9197.

Some petitions responsive to your request are withheld in full pursuant to Exemption (b)(3) of the FOIA. Exemption (b)(3) directs that FOIA does not apply to any records specifically exempted from disclosure by a separate statute. 5 U.S.C. § 552(b)(3). The USPTO is unable to release information regarding particular unpublished patents that may be responsive to your request pursuant to the Patent Act. See 35 U.S.C. § 122. Under the Patent Act:

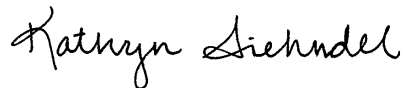
[Unpublished] applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Director.

35 U.S.C. § 122(a). Section 122(a) has been held to be a statute that exempts information from release to the public under Exemption (b)(3) of the FOIA, 5 U.S.C. § 552(b)(3). See Irons & Sears v. Dann, 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980); Leeds v. Quigg, 720 F. Supp. 193, 194 (D.D.C. 1989), aff'd mem., No. 89-5062 (D.C. Cir. Oct. 24, 1989). Accordingly, information concerning unpublished patents is exempt from release under the FOIA. If and when these applications are made public, the petitions for rescission or removal will be available in the public PAIR file wrapper.

The processing fee for this FOIA request has been waived. See 37 C.F.R. § 102.11(c)(1)(iv).

The withholding under Exemption (b)(3) constitutes a partial denial of your request for records under the FOIA. The undersigned is the denying official. You have the right to appeal this initial decision to the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 30 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial denial is in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

Sincerely,



Kathryn Siehndel
USPTO FOIA Officer
Office of General Law

Enclosure